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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket Nos. 120709225-2365-01 and 0907271173-0629-03]

RIN 0648-XC332

Snapper-Grouper Fishery of the South Atlantic; Reopening of the 2012 Commercial Sector for South Atlantic Red Snapper, Gag, and South Atlantic Shallow-Water Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the 2012 commercial sector for red snapper, gag, and all other South Atlantic Shallow-Water Grouper (SASWG) in the South Atlantic exclusive economic zone (EEZ).

NMFS previously determined the commercial annual catch limit (ACL) for red snapper would be reached by September 24, 2012, and closed the commercial sector for red snapper in the South Atlantic at 12:01 a.m., local time, on September 24, 2012.

Additionally, NMFS previously determined the commercial ACL for gag would be reached by October 20, 2012, and closed the commercial sector for gag and all other SASWG in the South Atlantic at 12:01 a.m., local time, on October 20, 2012.

However, updated landings estimates indicate neither the commercial red snapper nor the commercial gag ACL has been reached at this time. Therefore, NMFS is reopening the commercial sector for red snapper, gag, and all other SASWG in the South Atlantic. The commercial sector for all of these species will reopen at 12:01 a.m., on November 13, 2012, and close at 12:01 a.m. on November 21, 2012. The intended effect of this temporary rule is to maximize harvest benefits for commercial red snapper, gag, and all other SASWG fishermen. Additionally, this reopening for red snapper provides an opportunity to collect fishery-dependent data that could be useful for the 2014 red snapper stock assessment.

DATES: This temporary rule is effective 12:01 a.m., local time, November 13, 2012, until 12:01 a.m., local time, November 21, 2012.

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SUPPLEMENTARY INFORMATION: NMFS and the South Atlantic Fishery Management Council (Council) manage South Atlantic snapper-grouper including red snapper, gag, and all other SASWG under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). In the South Atlantic, SASWG means gag, black grouper, red grouper, scamp, red hind, rock

hind, yellowmouth grouper, yellowfin grouper, graysby, and coney. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## Background

### Red Snapper

Red snapper are overfished and undergoing overfishing. The harvest and possession of red snapper has been prohibited since January 4, 2010, initially through temporary rules (74 FR 63673, December 4, 2009, and 75 FR 27658, May 18, 2010), and then through the final rule to implement Amendment 17A to the FMP (75 FR 76874, December 9, 2010). Amendment 17A continued the prohibition on a permanent basis by implementing an ACL for red snapper of zero (landings only). Amendment 17A also implemented a rebuilding plan for red snapper, which specifies that red snapper biomass must increase to the target rebuilt level in 35 years, starting from 2010. At its June 2012 meeting, the Council received new information regarding discard estimates for red snapper. Using these data, the Council and NMFS determined that a limited season for red snapper would be possible in 2012. Therefore, the Council voted for, and NMFS implemented, emergency rulemaking to allow for the limited harvest and

possession of red snapper in or from the South Atlantic EEZ in 2012 (77 FR 51939, August 28, 2012).

Through the emergency rule, NMFS implemented an ACL of 20,818 lb (9,443 kg), gutted weight, for the commercial sector. A commercial trip limit of 50-lb (22.7-kg), gutted weight, no size limit, and a 7-day commercial fishing season were implemented to constrain harvest to the ACL. The commercial fishing season opened at 12:01 a.m., local time, September 17, 2012, and closed at 12:01 a.m., local time, September 24, 2012. The Southeast Fisheries Science Center (SEFSC) monitored commercial landings during the 7-day season to determine whether the commercial ACL had been harvested. The AMs specified in 50 CFR 622.49(b)(25)(i) state that if the SEFSC determines the ACL has not been harvested during the 7-day season, the Regional Administrator may reopen the commercial sector for an additional limited time. The SEFSC has determined that the ACL was not harvested during the first 7-day season, therefore, NMFS is reopening the commercial sector for red snapper beginning at 12:01 a.m., on November 13, 2012, and closing at 12:01 a.m., on November 21, 2012. During the reopening, harvest will again be limited to the 50-lb (22.7-kg), gutted weight, daily trip limit and there will be no size limit.

After the commercial sector closes, an operator of a vessel

with a valid commercial vessel permit for South Atlantic snapper-grouper having red snapper onboard must have landed and bartered, traded or sold such red snapper prior to 12:01 a.m., local time, November 21, 2012. During the closure, all sale or purchase of red snapper is prohibited and, because the recreational sector is also closed, the bag and possession limit of red snapper is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters. The prohibition on sale or purchase does not apply to the sale or purchase of red snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, November 21, 2012, and were held in cold storage by a dealer or processor.

#### Gag and SASWG

The commercial ACL (commercial quota) for gag in the South Atlantic is 352,940 lb (160,091 kg), gutted weight, for the current fishing year, as specified in 50 CFR 622.42(e)(7).

In accordance with regulations at 50 CFR 622.49(b)(3)(i), NMFS is required to close the commercial sector for gag and all other SASWG when the commercial ACL (commercial quota) for gag has been reached, or is projected to be reached, by filing a

notification to that effect with the Office of the Federal Register. NMFS determined that the commercial ACL (commercial quota) for South Atlantic gag was reached and published a temporary rule on October 15, 2012 (77 FR 62463) to close gag and all other SASWG on October 20, 2012. Accordingly, the commercial sector for South Atlantic gag and all other SASWG closed effective 12:01 a.m., local time, October 20, 2012, until the new fishing year begins at 12:01 a.m., local time, January 1, 2013. However, since that closure, the SEFSC has received additional landings data and has determined that the ACL was not harvested prior to October 20, 2012. Therefore, in accordance with 50 CFR 622.43(c), NMFS is reopening the commercial sector for gag and all other SASWG beginning at 12:01 a.m., on November 13, 2012, and closing at 12:01 a.m., on November 21, 2012. The recreational sectors for gag and for all other SASWG are not closed and continue to remain open until December 31, 2012.

Additionally, a seasonal closure is in place for the recreational and commercial sectors for gag and all other SASWG from January through April each fishing year as specified in 50 CFR 622.35(j). Therefore, after the commercial sector for gag and all other SASWG close at 12:01 a.m., on November 21, 2012, the commercial harvest of gag and all other SASWG will not commence until May 1, 2013.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having gag or other SASWG onboard must have landed and bartered, traded, or sold such gag or other SASWG prior to 12:01 a.m., local time, November 21, 2012. During this commercial closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1) and (d)(2), respectively, apply to all harvest or possession of gag or other SASWG in or from the South Atlantic EEZ, and the sale or purchase of gag or other SASWG taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of gag or other SASWG that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, November 21, 2012, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for gag or other SASWG would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(iii).

During the seasonal closure for the recreational and commercial sectors for gag and all other SASWG from January through April each fishing year, no person may fish for, harvest, or possess in or from the South Atlantic EEZ any SASWG.

In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply in the South Atlantic, regardless of where such fish are harvested, i.e., in state or Federal waters as specified in 50 CFR 622.35(j).

#### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic red snapper, gag, and all other SASWG and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.49(b)(25)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available information recently obtained from the snapper-grouper fishery. Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary and contrary to the public interest regarding red



snapper because the commercial ACL and AMs for red snapper were established in emergency rulemaking to allow for the limited harvest and possession of red snapper in 2012 (77 FR 51939, August 28, 2012), and the AMs allow the Regional Administrator to reopen the commercial sector if the ACL has been determined to have not been reached during the first 7-day commercial season. Such procedures are unnecessary and contrary to the public interest regarding gag because NMFS previously determined the commercial ACL for gag would be reached by October 20, 2012, and closed the commercial sector for gag and all other SASWG in the South Atlantic at 12:01 a.m., local time, on October 20, 2012. However, updated landings estimates indicate the ACL for the commercial sector for gag has not been reached at this time, and therefore additional harvest is available in order to achieve optimum yield. All that remains is to notify the public that additional harvest is available under the established ACLs and, therefore, the commercial sector for red snapper, gag, and all other SASWG will reopen.

Additionally, reopening the commercial sector for red snapper, gag, and all other SASWG will likely result in revenue increases to commercial vessels. Fishermen will be able to keep the red snapper, gag, and all other SASWG that they are currently required to discard. Additionally, reopening the

commercial sector for red snapper will provide an opportunity to collect fishery-dependent data that will likely be useful for the 2014 red snapper stock assessment. Delaying the implementation of this rulemaking to provide prior notice and the opportunity for public comment would reduce the likelihood of reopening the commercial sector for red snapper, gag, and all other SASWG in the 2012 fishing year.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 et seq.

Dated: November 9, 2012

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Emily H. Menashes,  
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